

United States District Court
For the NEW MEXICO District of LAS CRUCES

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO

2016 JUN 30 AM 11:55

CLERK-LAS CRUCES

Motion, Under Section 2255 (f)(3) of Title 28
United States Code

Attacking a Sentence, or Conviction imposed by That Court

United States of America,
Plaintiff/Respondent,

v.

Cirilo Orozco Sanchez,
Defendant/Movant.

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§

Case No. 215CR01557-001WS

16 CV 762 WJ/KBM

Instructions-Read Carefully

In order for this motion to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten) by the Movant, under the penalty of perjury, and it shall set forth in concise form the answers to each applicable question. If necessary, Movant may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Movant shall make it clear to which question any such continued answer refers.

Since every motion under Section 2255 of Title 28, United States Code, must be made under penalty of perjury, any false statement of a material fact therein may serve as the basis of prosecutions and conviction for perjury. Movant should therefore exercise care to assure that all answers are true and correct. . When the form is completed, the *original and 2 copies* shall be mailed to

The Clerk of the District Court for the San Marcos District of New Mexico,
100 North Church Street, Room 2, San Marcos, NM 88001

1. Place of Detention: F.C.I. Maricopa, 2101 W. McDowell, Maricopa, AZ 85138

2. Judge (If Known): don't know

3. The Criminal case number[s] (If known):

(a) _____

(b) _____

(c) _____

4. The date upon which the sentence was imposed and the term[s] of the sentence:

(a): June 7, 2015

5. Check whether a finding of guilt was made:

(a) Entered a plea of guilty []

(b) Went to Trial []

(c) Open plea to the Court [X]

6. If you were found guilty after a plea of not guilty, check whether that finding was by:

(a) A jury [] N/A

(b) A judge []

7. Did you Appeal from the judgment of conviction or the imposition of sentence?

Yes [] No [X]

8. If you answered "YES" to question 7, list what Court[s].

I. N/A

II. _____

III. _____

A. What were the results?

(i). Conviction and sentence affirmed [] N/A

(ii). Conviction and sentence vacated []

(iii). Conviction vacated []

(iv). Sentence vacated []

(v) Other []

B. The date of each such result:

- (i) N/A
 (ii) _____ N/A
 (iii) _____

C. If known, citation[s] of any written opinions or order[s] entered under such results:

- (i) N/A
 (ii) _____
 (iii) _____

9. Have you previously filed under Section 2255, or any other applications, petition[s], and motion [s]: Yes [] No [☒]

(i). If "yes", please list each and to what Court, disposition, date and citation[s] thereof:

- (a). N/A
 (b). _____
 (c). _____
 (d). _____

(ii). were there any written opinions or orders: Yes [] No [] N/A

(a). if "yes", please explain: N/A

Ground One: State concisely the ground on which you base your allegation that the conviction and/or sentence which imposed on you are invalid:
INEFFECTIVE ASSISTANCE OF COUNSEL UNDER STRICKLAND V. WASHINGTON STANDARDS
UNDER THE SIXTH CONSTITUTIONAL AMENDMENT
SEE Page # 8 for other grounds

(a). State concisely the facts without citing case law:

Petitioner was denied his Sixth Amendment Constitutional right and was Prejudice when Defense Counsel failed to move the District Court to DISMISS INDICTMENT, when Petitioner advised Counsel that the State Case from 1997 and 1998 where not aggravated and that Counsel, in does cases never advised petitioner about "IMMIGRATION CONSEQUENCES" and that the predicated prior convictions used for removal/deportation where not "PUNISHABLE" by imprisonment exeeding ONE YEAR.....CONTINUE

On Page # 9
 Motion for relief under Section 2255

-A prior State or Federal Conviction must establish all elements and Sentencing factors necessary to authorize the punishment beyond ONE YEAR . . The maximum sentence the state or the Federal Court could impose without additional fact-findings . . are below one year, So neither prior conviction counts as a "Felony" for Removal or 16-Level Enhancement. the 16-Level Enhancement should be REMOVED and petitioner should be Re-sentenced. The Deportation Order could have been argued by Defense Counsel under §1326 (D).

(b). Did you raise this issue on Appeal: Yes [] No [X]

(i) If no, explain why: I believed that I could not Raise Ineffective Assistance of Counsel on Appeal.

(c). Did you raise this issue in any post-conviction motion, petition, or application?

Yes [] No [X]

(i). If "yes" please explain: N/A

Type of motion or petition: N/A

Name and location of the Court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the Court's decision: N/A

Result (attach a copy of the Court's opinion or order, if available): N/A

Ground Two: State concisely the ground on which you base your allegation that the conviction and/or sentence which imposed on you are invalid.

WHETHER DUE PROCESS DEFECTS IN UNDERLYING DEPORTATION PROCEEDINGS RENDERED PETITIONERS GUILTY PLEA INVOLUNTARILY AND INTELLIGENT DEFECTIVE.

(a). State concisely the facts without citing case law:

Petitioner was not advised of the immigration consequences of pleading Guilty to DWI and TRANSPORTING ILLEGAL ALIENS to the United States, (1997 and 1998 cases) charges that would cause petitioner to waive section 212 (c) INA right and be Deported/Removed, DENIED re-entry into the U.S, or that it was an Aggravated Felony under Federal Law, Petitioner did not knowingly and Intelligently plead Guilty because this information was never explained to petitioner. Petitioner is not a Lawyer and this needs to be addressed and investigated by Alternate Defense Counsel whom I am respectfully requesting to be appointed to represent me and request as Discovery the plea and Sentencing Transcripts to both 1997 and 1998 Case which where the only TWO cases that I seen an Immigration Judge on.

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(b). Did you raise this issue on Appeal: Yes [] No [X]

(i) If no, explain why: Petitioner was not told by Defense Counsel at any Stage if Petitioner wanted to Appeal at all

(c). Did you raise this issue in any post-conviction motion,, petition, or application?

Yes [] No [X]

(i). If "yes" please explain: N/A

Type of motion or petition: N/A

Name and location of the Court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the Court's decision: N/A

Result (attach a copy of the Court's opinion or order, if available): N/A

Ground Three: State concisely the ground on which you base your allegation that the conviction and/or sentence which imposed on you are invalid:

WHETHER REMOVAL PROCEEDINGS DEPRIVED PETITIONER FOR JUDICIAL REVIEW UNDER 8 U.S.C.A §1326 (D)

SEE PAGE #8,9 FOR OTHER GROUNDS AND SUPPORTING FACTS

(a). State concisely the facts without citing case law:

Both state and Federal Convictions used to remove/deport petitioner did not constitute an Aggravated Felony under Federal or INA Law and they where not over ONE YEAR of Sentence, and because the underlying removal order serves as a predicated element of illegal reentry offense under §1326, Petitioner charged with the offense may collaterally attack the removal Order under the Due Process Clause, Here the removals where fundamentally unfair 8 U.S.C §1326 (D)(3), Petitioner had an I-485 REQUEST pending , Petitioner stated this to Defense Counsel who rendered Ineffective Assistance of Counsel in conceding that petitioner was convicted of an Aggravated Offense that could be used for DEportation and 16-Level Enhancement, Petitioners is respectfully requesting an EVIDENTIARY HEARING or as an Alternative for this Honorable Court to please appoint Alternate Public Defender to Investigate issue.

(b). Did you raise this issue on Appeal: Yes [] No [X]

(i) If no, explain why: Petitioner was never advised by defense counsel at any stage of Petitioners rights to Appeal.

(c). Did you raise this issue in any post-conviction motion, petition, or application?

Yes [] No [X]

(i). If "yes" please explain:

N/A

Type of motion or petition: N/A

Name and location of the Court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the Court's decision: N/A

Result (attach a copy of the Court's opinion or order, if available):

N/A

10. Were you represented by an Attorney at any time during the course of your proceeding[s]? Yes [X] No [], if "Yes" please provide name and address:

(a). at arraignment:

Do not know the name

(b). at trial:

N/A

(c). at sentencing:

Do not know the name

(d). on appeal:

N/A

11. Is this Section 2255 timely filed? If not explain why: *This motion is timely*
This MOTION under 28 U.S.C §2255 IS TIMELY

Wherefore, Movant prays that the Court will grant relief to which he may be entitled in this proceeding.

Signed under the penalty of perjury (28 U.S.C. § 1746) by 28 U.S.C. 51746, on this 23rd, day of June, 2016

Armando Orozco S
Signature

CONTINUE FROM PAGE 3 GROUND 1 28 U.S.C §2255

GROUND FOUR: WHETHER DEFENSE COUNSEL WAS INEFFECTIVE ASSISTANCE FOR NOT FILING NOTICE OF APPEAL WHEN PETITIONER REQUESTED HIM TO PLEASE DO SO.

GROUND FIVE: WHETHER THE VALIDITY OF THE DEPORTATION ORDER WAS IN VIOLATION OF DUE PROCESS AND JUDICIAL REVIEW

GROUND SIX : WHETHER PETITIONERS PRESENTENCE INVESTIGATION REPORT IS OVERSTATED WITH INCONSISTANT, IMPROPER CONCLUSIONS IN VIOLATION OF DESCAMPS

GROUND SEVEN: WHETHER DEFENSE COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL FOR DENYING PETITIONER A PROPER DEFENSE FOR 18 U.S.C §1326 (b)(2) INFORMATION, INDICTMENT

GROUND EIGHT: WHETHER PETITIONERS FALLS UNDER JOHNSON V. UNITED STATES, AND MATHIS

SUPPORTING FACTS:

Petitioners predicated Aggravated Felony Offense is not over one year and is not a Violent Case to be receiving a 16 point Enhancement under Federal Aggravated Felony, Petitioner stated to Defense Counsel that if he could file and appeal and was told that he would and as up to date petitioner has not received nothing or any NOTICE , Petitioners rights to NOTICE of enhancement is a Violation under DESCAMPS, JOHNSON, TAYLOR AND MATHIS, under the Sixth Constitutional Amendment petitioner should be GRANTED to set aside his Conviction and Sentence which cannot stand because petitioner does not have an Aggravated Felony offense.

PLEASE ALSO SEE PETITIONERS AFFIDAVIT FOR SUPPORTING FACTS

CONTINUE FROM PAGE 3 SUPPORTING FACTS

The District Court erred in sentencing petitioner to 72 Months by applying a 16-Level enhancement under convictions which are not aggravated and which petitioner was only sentenced to 30 days (1997 Case), and 9 Months (1998 Case). The Prior Predicated convictions are not FELONY offenses of over a year sentence.

Defense counsel was ineffective Assistance of Counsel for not objecting to the application of 16-level enhancement, when petitioner had been excluded from the USA TWO years only back in 1998.

Petitioner challenges his 72 Month sentence imposed for 8 U.S.C §1326 §1326 (B). The Honorable Judge never went into the §3553 Sentencing factors and just adopted the presentence investigation report without letting petitioner know what convictions were being used for 16-Level Enhancement and did not ask if petitioner had went through the PSI with Defense Counsel.

GROUND FOUR: WHETHER THE DISTRICT COURT ERRONEOUSLY APPLIED A 16 POINT ENHANCEMENT

SUPPORTING FACTS: Petitioner was prejudiced and denied his constitutional rights under the Due Process by the District Court and Defense counsel. Because because the the only cases petitioner has seen an Immigration Judge have been for a sentence of 30 days and a sentence of 9 Months and which are not for over a year or 13 Month Sentence for 16-Point level to be placed on Petitioner, therefore was Denied Ineffective Assistance of counsel.

Petitioner is respectfully requesting for appointment of Alternate Defense Counsel to investigate this issues and for Justice to be better served.

11. In August 10, 2010 I came back to the United States and was arrested same day in the Arizona Desert walking and was Sentenced in Federal District Courthouse in ARIZONA, TUCSON to 63 Months and I did NOT see an Immigration Judge, I was released on 3-12-2015 from the BOP on the 63 Month Sentence... Case Number 4:10CR02302--001RCC

12. March 25, 2015 I came back to the United States and was arrested in New Mexico walking in the Desert and was Sentenced to "72" Months thats why I am here for.

before my sentence I stated to my Defense Counsel that I had no choice in coming to the United States because I had been kidnapped by the ZETAS and was forced to come to the United States because they would kill me, but for some reason he just stated to me that I was just facing 24 Months sentence and for me just to plea Guilty because if I would go to Trial that I would get a LIFE sentence because of my passed Criminal History, I was surprised during Sentencing when the Honorable Judge Sentenced me to 72 Months, My Defense Counsel never stated to me the Consequences or Waiver of me pleading Guilty, My Defense Counsel never stated to me that if I wanted to appeal the sentence or Conviction at all after I had stated to her that it was to much time and that why I was not been sentenced to 24 Months as she had stated., After I was Sentenced and Convicted I was taken for Supervised Release Violation in the State of ARIZONA and stated to my Attorney and the Honorable Judge that I had been forced to Come back to the United States by the ZETAS CARTEL, and that I had been kidnapped and threaten to be killed if I was ever seen again, at both times during this case and the Supervised release Violation Hearin I was denied my Defense in why I keep on coming back to the United States and this Issue has not been heard by the Honorable Judge in this case, and I did tell my Defense Counsel why I keep on coming back but for some reason I am just NOT belived by my Defense Counsels, I am respectfully requesting for the Honorable Court Judge to please request the Sentencing Transcripts to the Supervised Release Violation Hearing if for some reason I am not belived that I stated this to my Attorneys and the Honorable Sentencing Judge,

I am not a Violent Person and will never be, I belive that I was Mislead into a Guilty Plee with the wrog factual Allegations and My Criminal History is to old to be counting as Criminal History Points, for This reason I am respectfully requesting for the Honorable Court Judge to please appoint Alternate Counsel to help me in my Problem.

Executed On _____
Under 28 U.S.C § 1746

Cirilo Orozco S.
Cirilo Orozco Sanchez